



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

RECEIVED & INSPECTED

SEP 20 2002

FCC - MAILROOM

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 02-2266

September 16, 2002

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON
PETITION FOR RECONSIDERATION AND CLARIFICATION OF COMMISSION ORDER
REGARDING WESTERN WIRELESS' BASIC UNIVERSAL SERVICE OFFERING IN
KANSAS**

WT Docket No. 00-239

Comment Date: October 16, 2002

Reply Comment Date: October 31, 2002

On September 3, 2002, the State Independent Alliance and the Independent Telecommunications Group filed a Petition for Reconsideration and Clarification (Independents' Reconsideration Petition), seeking reconsideration and clarification of the Commission's Memorandum Opinion and Order (*BUS Order*) holding that Western Wireless' Basic Universal Service (BUS) offering in Kansas is a Commercial Mobile Radio Service (CMRS).¹ In that order, the Commission concluded that (1) BUS is a CMRS offering; (2) Kansas may not regulate BUS entry or rates and may not require equal access for telephone toll services, although it may regulate the other terms and conditions of BUS; and (3) Western Wireless is not subject to federal regulation as a LEC with respect to the BUS offering.

The Independents' Reconsideration Petition seeks reconsideration of the Commission's decisions in the *BUS Order* that (1) Western Wireless' BUS offering is a mobile rather than a fixed offering and therefore classified as CMRS; and (2) BUS is a CMRS offering because it is ancillary, auxiliary, or incidental to CMRS. The Independents' Reconsideration Petition also seeks clarification that the Commission did not adopt the finding in the *BUS Order* that BUS meets the statutory definition of mobile service because two of the Commissioners did not support that conclusion. Finally, the Independents' Reconsideration Petition seeks clarification of the *BUS Order* regarding whether Kansas is prohibited from establishing equal access as a condition of receipt of Kansas universal service funds.

¹ Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is subject to Regulation as Local Exchange Service, WT-Docket No. 00-239, FCC 02-164 (rel. August 2, 2002) (*BUS Order*).

Pursuant to Section 1.1206(a)(3), declaratory ruling proceedings are conducted as non-restricted, "permit-but-disclose" proceedings under the Commission's *ex parte* rules.² Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.³ Other rules pertaining to *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.⁴

We invite comment on the Independents' Reconsideration Petition. All filings concerning matters referenced in this Public Notice should refer to WT Docket No. 00-239 and reference the Independents' Reconsideration Petition. Interested parties may file comments no later than October 16, 2002. Replies may be filed no later than October 31, 2002. All filings should indicate in the caption that this matter is before the Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch. Submissions in this matter may be filed electronically via the Commission's Electronic Comment Filing System (ECFS) or by paper, as explained below.

- If filed by ECFS, comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.
- If filed by paper, an original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.⁵ The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.⁶ The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or

² 47 C.F.R. § 1.1206(a)(3).

³ See 47 C.F.R. § 1.1206(b).

⁴ 47 C.F.R. § 1.1206(b).

⁵ Please note that we continue to experience delays in receiving U.S. Postal Service mail.

⁶ See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22,165 (2001).

overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings) to: (1) the Commission's duplicating contractor, Qualex International, at qualexint@aol.com or (202) 863-2898 (facsimile); and (2) Milton Price, Commercial Wireless Division, Wireless Telecommunications Bureau, at mprice@fcc.gov or (202) 418-7447 (facsimile).

Independents' Reconsideration Petition is available for public inspection and copying in the FCC's Reference Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Copies of the request may also be obtained from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at qualexint@aol.com. The request is also available electronically through ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov/e-file/ecfs.html> by entering the Docket Number of this proceeding, WT Docket No. 00-239.

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or e-mail at bmillin@fcc.gov. This Public Notice can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb/dro>.

For further information, contact Rose Crellin, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-7240 (voice) or (202) 418-1169 (TTY).

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.